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HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

No. 565

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., and ITS LOCALS 125 AND 1282, ET AL.,
Appellants,
vs.
AXEL B. ANDERSON, District Judge,
and
McQUAY, INC.,
Appellees

APPEAL FROM THE SUPREME COURT OF MINNESOTA

## JURISDICTIONAL STATEMENT

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

No.....

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, AND ITS LOCALS 125 AND 1282; EDWARD R. MURNANE, WILLIAM A. DUNFORD, MAURICE REOPELLE, JOHN SMITH, LEWIS MOLL, HENRY SCHICKS, LESTER MAHONEY, JAMES REED, MAYNARD BAUER, RALPH DWYER, HUBERT DICKEY, RALPH BROWN, LOUIS MEYER, RAYMOND WESKE, ED HIERSCHE, JAMES HARDING, RAYMOND RESS, DAN McIVER, THOMAS HOVEN, WALTER GROSS, DONALD MORRIS, MAURICE DEBITT, JAMES MAHAGNOUL, KEITH HIERSCHE, WARREN CROSS and WILFRED JUAIRE,

Appelants,

vs.

THE DISTRICT COURT FOR THE COUNTY OF RICE, STATE OF MINNESOTA, FIFTH JUDICIAL DISTRICT,

and

AXEL B. ANDERSON, Judge of the District Court for the County of Rice, State of Minnesota, Fifth Judicial District,

and

McQUAY, INC.,

Appellees

APPEAL FROM THE SUPREME COURT OF MINNESOTA

## STATEMENT AS TO JURISDICTION

Appellants submit herewith their statement particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the judgment of the Supreme Court of Minnesota quashing an Order to Show Cause why a per-

manent and absolute writ of prohibition should not issue restraining the Honorable Axel B. Anderson, Judge of the District Court, Fifth Judicial District, State of Minnesota, from enforcing a temporary injunction as issued by him.

## THE OPINION BELOW

The opinion of the Minnesota Supreme Court was filed July 15, 1955, but has not been reported. A copy of the opinion is attached hereto as Appendix "C".[1]

## JURISDICTION

1. The Supreme Court of Minnesota denied appellants' application for an absolute writ prohibiting the enforcement by the District Court, Fifth Judicial District of Minnesota, of its temporary injunction issued against appellants pursuant to the Minnesota Labor Relations Act, Minnesota Statutes 1953 Ch. 179.

2. The Supreme Court of Minnesota handed down its opinion on July 15, 1955. No petition for a re-hearing was filed. Judgment was entered by the Supreme Court of Minnesota on August 9, 1955. The Notice of Appeal to this Court was filed by the appellants with the Clerk of the Supreme Court of Minnesota on October 13, 1955. On September 20, 1955, appellants moved the Supreme Court of Minnesota for certification that a Federal question was decided and, on September 30, 1955, the Court entered an order without opinion denying this motion. That the Minnesota court did in fact consider and rule against appel-

[1] This case does, however, appear in the National Reporter Service: 72 N. W. 2d 81.

lants' contention of repugnancy of the Minnesota statute to the United States Constitution and to the National Labor Relations Act, is manifest from its opinion.

3. The jurisdiction of this Court upon appeal is conferred by 28 U. S. C. Sec. 1257 (2). Appellants challenge the validity of Minnesota Statutes 1953, 179.11, 179.13 and 179.14 on the ground that said statutes are repugnant to the Constitution and Statutes of the United States; the decision appealed from is a final one, rendered by the highest court in the State of Minnesota, and adverse to the contention of repugnancy.

4. Cases believed to sustain the jurisdiction of this Court on appeal include *Plowden Weston and others v. Charleston*, 2 Pet. 449; *Mount Vernon-Woodberry Cotton Duck Company v. Alabama Interstate Power Company*, 240 U. S. 30; *St. Louis B & M Ry. v. Taylor*, 266 U. S. 200; *Michigan Central v. Mix*, 278 U. S. 492; *Bandini v. Superior Court*, 284 U. S. 8; *Rescue Army v. Municipal Court*, 331 U. S. 549; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767; *United Gas, C. & C. Workers v. Wisconsin Employment Relations Board*, 340 U. S. 383; *LaCrosse Telephone Company v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Hill v. Florida*, 325 U. S. 538; *International Union, U. A. W. A., A. F. of L. Local 232 v. Wisconsin Employment Relations Board, et al.*, 336 U. S. 245.

## STATUTES INVOLVED

Minnesota Statutes 1953:

Ch. 179.10 (1), p. 1636
Ch. 179.11 (6), (7), (10), pp. 1636-37
Ch. 179.13, p. 1637
Ch. 179.14, p. 1638

National Labor Relations Act, June 23, 1947, Ch. 120, Title I, Sec. 101, 61 Stat. 136; 29 U. S. C. 151-167:

61 Stat. 140, 29 U. S. C. 157
61 Stat. 140, 29 U. S. C. 158 (b) (1)
61 Stat. 146, 29 U. S. C. 160 (a)
61 Stat. 146, 29 U. S. C. 160 (j)

Texts are set out in Appendices "A" and "B".

## QUESTION PRESENTED

Whether the District Court of Rice County, Minnesota, had jurisdiction under the Minnesota Labor Relations Act to enjoin unfair labor practices defined by that Act, when the labor dispute giving rise to the conduct enjoined is one which affects interstate commerce and acts defined and enjoined as unfair labor practices under the Minnesota Act are also unfair labor practices under the National Labor Relations Act as amended, Title 29 U. S. C. Sec. 141 *et seq.*

## STATEMENT

### 1. Facts Material to the Issue.

1. Appellants International Union and its Local 1282 were duly certified by the National Labor Relations Board on February 11, 1954 as the collective bargaining representative of employees of appellee, McQuay, Inc. at its plant in Faribault, Minnesota.[2] After unsuccessful attempts to negotiate a contract the union struck and began picketing in support of its contract demands on June 10, 1954. On November 12, 1954, appellee, McQuay, Inc., brought an action against appellants (in the District Court, a Minnesota court of general jurisdiction) under the Minnesota Labor Relations Act (Minnesota Statutes 1953, Ch. 179; App. "A") alleging the commission of unfair labor practices as therein defined (R. 11 to R. 13).[3] On

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[2] National Labor Relations Board case No. 18-RC-2052 (not published).

[3] Reference is to the numbered pages of the printed record in the Supreme Court of Minnesota.

Paragraph X. of the complaint alleged the following acts as unfair labor practices under the Minnesota statute:

"(a) Interfered with the operation of vehicles and the operators thereof when neither the owners nor operators of said vehicles were at the time parties to any strike;

"(b) Compelled or attempted to compel a number of persons to join a strike against their respective individual wills by threatened and by actual unlawful interference with the person or persons, immediate family or families or physical property of, and by assaulting or unlawfully threatening, said person or persons while they were in pursuit of lawful employment.

"(c) Interfered with the free and uninterrupted use of public roads in the City of Faribault, Rice County, Minnesota, and methods of transportation or conveyance thereon, and wrongfully obstructed ingress to and egress from plaintiff's plant in Faribault, Minnesota, the same then and there being a place of business and employment;

"(d) By mass picketing and a show or demonstration of force and threats of force and by other means, the defendants and other persons or parties to plaintiff unknown, but acting in concert with or as agents or representatives of said defendants, have intimidated and coerced plaintiff's employees, and prospective employees, in violation of the statutes as hereinbefore alleged and in further violation of the rights of said employees, former employees, or prospective employees under Section 179.10 of Minnesota Statutes 1953."

November 22, 1954, following proceedings conforming to the statute, the District Court issued a Writ of Temporary Injunction prohibiting and restraining defendants (appellants here) from continuing the unfair labor practices complained of. Application by defendants to the Supreme Court of Minnesota for a Writ of Prohibition to the District Judge was heard on May 24, 1955.[4] Judgment against relators (appellants here) sustaining the jurisdiction of the trial court and dismissing the provisional writ was entered on August 9, 1955, following an opinion handed down on July 15, 1955 (See Appendix "C").

**2. How the Federal Question Is Presented.**

A petition for a writ of prohibition gives rise to an original proceeding in the Supreme Court of Minnesota, the highest judicial tribunal in that state.[5] The petition challenges only the jurisdiction of the inferior tribunal to which the writ is directed. *State ex rel. United Elec. Radio and Machine Workers of America v. Enerson*, 230 Minn. 427, 42 N. W. 2nd 25, *Bellows v. Ericson*, 233 Minn. 320, 46 N. W. 2nd 654, *Flodin v. District Court 15th Jud. Dist. Koochiching County*, 222 Minn. 546, 25 N. W. 2nd 692, and *State ex rel. Laurisch v. Johnson*, 216 Minn. 219, 12 N. W. 2nd 343.[6]

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[4] The hearing was on an order to the District Judge entered November 30, 1954 to show cause why the writ should not issue, the District Judge being represented in this proceeding according to the usual practice by counsel for plaintiff in the original action.

[5] Minn. Stat. 1953, 587.01 WRITS; ISSUANCE AND CONTENTS.

"Writs of prohibition shall be issued only by the Supreme Court, and shall be applied for upon affidavit, by motion to the court, or to a judge thereof in vacation. * * *"

[6] "Prohibition is a distinct suit and the judgment finally disposing of it is a final judgment within the meaning of the Judicial Code. * * * The fact that it does not decide the merits of the principal suit is immaterial. It is not devoted to that point but only to the preliminary question of the jurisdiction of the court in which the suit is brought." *Mount Vernon-Woodberry Cotton Duck Company v. Alabama Interstate Power Company*, 240 U. S. 30.

In the affidavit in support of their motion for a writ of prohibition, appellants showed that plaintiff-respondent was engaged in interstate commerce within the meaning of the Labor Management Relations Act, 1947, 29 U. S. C. 141 through 197[7]; that the N. L. R. B. created by the Labor Management Relations Act 1947 has exclusive jurisdiction to prevent unfair labor practices committed by either relator union or McQuay, Inc., in labor disputes affecting commerce; and that the temporary injunction was wholly void and unauthorized by law, involving as it does, a field of law pre-empted by Congress pursuant to the Labor Management Relations Act 1947 (R. 39). In its Order to Show Cause why a writ of prohibition should not issue, the Supreme Court found on affidavit submitted by defendant-relators:

> "That respondent Axel B. Anderson, now threatens to enforce said temporary injunction * * * and that unless prohibited and restrained by writ of this honorable court, the respondent Axel B. Anderson will enforce said temporary injunction which is wholly void and unauthorized by law involving at it does a field of law pre-empted by Congress pursuant to said Labor Management Relations Act 1947." (See point 14 of Order of the Minnesota Supreme Court dated November 30, 1954, R. 33.)

On oral argument and in the brief submitted, these points were strongly urged to the Supreme Court of Minnesota as a basis for granting an absolute writ of prohibition. However, the Court ruled that the Labor Management Relations Act 1947 does not deprive the courts of Minne-

[7] This point was not challenged by plaintiff respondent McQuay, Inc. See opinion of Minnesota Supreme Court, Appendix "C", p. 7a.

sota of jurisdiction to grant injunctive relief under the State Labor Relations Act, Minnesota Statutes 1953, Ch. 179) to prevent unions from committing unfair labor practices under the state act and to order unions to cease and desist from committing them, when such unfair labor practices involve violence and threats thereof.

Thus the validity of a state statute was clearly drawn into question in this proceeding, and the highest court of the State of Minnesota rendered its decision in favor of the state statute's validity as against the contention of its repugnancy to the laws and Constitution of the United States.

There can be no doubt of the finality of the judgment below. This Court has long held that judgments by the highest court of a state denying a writ of prohibition, have the necessary finality to warrant review by this Court. Chief Justice Marshall in *Plowden Weston and others v. Charleston*, 2 Pet. 449, opined for the Court that a judgment denying a writ of prohibition rendered by the highest court of a state, is a final judgment. In *St. Louis B & M Railway v. Taylor*, 266 U. S. 200, Justice Brandeis, for the Court stated as follows:

> "The suggestion was made, at the argument, that this court is without jurisdiction because the judgment below was not final. The contrary is settled. The application for a writ of prohibition is an independent adversary suit which was finally determined by the judgment under review."

In 1947, the United States Supreme Court had before it companion cases, *Rescue Army v. Municipal Court*, 331 U. S. 549, and *Gospel Army v. Los Angeles*, 331 U. S. 543. In each case it was contended that a Los Angeles ordinance

was unconstitutional. In the *Rescue Army* case, the Supreme Court of California denied a petition for a writ of prohibition to restrain the municipal court from trying the alleged violators of the ordinance. In the *Gospel Army* case, an injunction had been denied in the lower court and on appeal, the California Supreme Court held that the statute in question was constitutional and reversed the case, thereby, under California law, authorizing a retrial of the case. This Court denied an appeal of the judgment in the *Gospel Army* case on the grounds it was not final. In the *Rescue Army* case, however this Court accepted jurisdiction on the grounds that the judgment denying the writ of prohibition was final and expressly distinguished this judgment from the one in the *Gospel Army* case. See also *Mt. Vernon-Woodberry Cotton Duck Company v. Alabama Interstate Power Company*, 240 U. S. 30; *Michigan Central v. Mix*, 278 U. S. 492. It is, therefore, abundantly clear that the judgment in the case at bar rendered by the Minnesota Supreme Court is a final one and appellants submit this case falls within the jurisdiction of this Court to be heard on appeal.

## THE QUESTIONS ARE SUBSTANTIAL

This appeal presents another of the numerous problems "of the interplay between state and federal jurisdiction touching labor relations." (*Weber v. Anheuser-Busch*, 348 U. S. 468). The particular question is whether a State, in view of Sections 8 and 10 (a) of the National Labor Relations Act, as amended [29 U. S. C. 158 and 160 (a)] may, *under its own labor act* define as unfair labor practices and enjoin conduct affecting interstate commerce which also constitutes unfair practices under the federal statute.

The power of Congress to *pre-empt* a field concerning which it is authorized by the United States Constitution to legislate is beyond controversy.[8]

The first case to come before this Court relating to federal pre-emption of labor relations was *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740. The Wisconsin Employment Relations Board found the Union had engaged in violence, mass picketing and assault. This Court upheld the State Board's jurisdiction, as affirmed by the Wisconsin Supreme Court, holding that such conduct was not subject to regulation by the Federal Board, either by prohibition or protection. It appears *the basis for the decision was that Congress had in no wise attempted to regulate the conduct involved, thus leaving the states free to enjoin it under state law.* This Court found:

> "Congress has not made such employee and union conduct as is involved in this case subject to regulation by the Federal Board."

The inference to be drawn from this case is that if such conduct had been subject to federal regulation the opposite result would have obtained. This view is strengthened by *Hill v. Florida*, 325 U. S. 538, where it was decided a State

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[8] United States Constitution, Article VI, Clause 2. See *Oregon-Washington Railroad Co. v. State of Washington*, 270 U. S. 87; *Kelly Director et al. v. Washington ex rel. Foss Company*, 302 U. S. 1. See also *Missouri Pacific v. Porter*, 273 U. S. 341 wherein the court said: "Congress must be deemed to have determined that the rule laid down and the means provided to enforce it are sufficient and that no other regulation is necessary. Its power to regulate such commerce and all its instrumentalities is supreme; and, as that power has been exerted, state laws have no application. They cannot apply in coincidence with, as complementary to or as an opposition to, Federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction."

may not interfere with or prohibit the exercise of rights protected by the Wagner Act. The Court there explained the decision in *Allen-Bradley* as follows:

> "Certain conduct, such as mass picketing, threats, violence, and related actions, we held [in *Allen-Bradley*] were not governed by the Wagner Act, and hence Wisconsin was free to regulate them."

The exclusive and pre-emptive character of the Federal Board's machinery for resolving representation and certification problems was established in *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767.

It was against this decisional background that the Taft-Hartley Amendments to the Wagner Act were enacted in 1947. Labor Management Relations Act, 1947, 29 U. S. C. 141 ff. Unfair labor practices of unions and employees were defined and the National Labor Relations Board given power to proscribe them [29 U. S. C. 158(b) and 160].

The pre-emptive and *exclusive* character of this regulation, as to its protective and prohibitive as well as procedural features, was recognized in subsequent decisions of this Court. *Automobile Workers v. O'Brien*, 339 U. S. 454; *Bus Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383; *LaCrosse Telephone Co. v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, 338 U. S. 953; *Garner v. Teamsters Union*, 346 U. S. 485; *Building Trades Council v. Kinard Construction Company*, 346 U. S. 933; *General Drivers v. American Tobacco Company*, 348 U. S. 978.

In *Weber v. Anheuser-Busch*, 348 U. S. 468, this Court reviewed its earlier decisions in this field and pointed out:

> "A state may not enjoin under its own labor statute conduct which has been made an 'unfair labor practice' under the federal statute." (Citing *Garner v. Teamsters Union, supra; Plankinton Packing Company v. W. E. R. B., supra; Building Trades Council v. Kinard Construction Company, supra.*)

Minnesota here did precisely what this Court said it may not do, namely enjoin *under its own labor statute* as unfair labor practices conduct prohibited as unfair labor practices by the National Labor Relations Act as amended. For the acts alleged in McQuay, Inc.'s complaint (footnote 3 *supra*) and enjoined as unfair labor practices within the meaning of Minnesota Statutes 1953, 179.11, 179.13 and 179.14 (Appendix "A") fall within the purview of Sections 7, 8 and 10 of the National Labor Relations Act as amended (29 U. S. C. 157, 158, 160)—*these unfair labor practices under the Minnesota Labor statute having been held to be unfair labor practices under the federal statute by the National Labor Relations Board.*[9]

Thus the evils which this Court has sought to alleviate are glaringly involved in the decision below. For this

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[9] *Cory Corporation*, 84 NLRB 972 (mass picketing); *Mercury Mining and Construction Corporation*, 96 NLRB 1389 (prevention of ingress and egress); *Irwin-Lyons Lumber Co.*, 87 NLRB 54 (threats and intimidation); *Mine Workers Local 1282*, 112 NLRB No. 24 (interference with traffic); *Perry Norwell Co.*, 80 NLRB 225 (intimidating employee at domicile); see also *Smith Cabinet Mfg. Co.*, 81 NLRB 886; *Abe Meltzer, Inc.*, 108 NLRB 1506; *Tungsten Mining Corp.*, 106 NLRB 903; *United Mine Workers, District 2*, 103 NLRB 1572; *Sunset Line and Twine Co.*, 79 NLRB 1487; *North Electric Mfg. Co.*, 84 NLRB 136; *Colonial Hardwood Flooring*, 84 NLRB 563; *Bechtel Corp.*, 108 NLRB 1070; *The Englander Co., Inc.*, 108 NLRB 38; *United Electrical Workers*, 106 NLRB 1372; *Union Supply Co.*, 90 NLRB 436; *Local 6281, United Mine Workers*, 100 NLRB 392; *Bell Aircraft Co.*, 105 NLRB 755; *Progressive Mine Workers, International Union v. NLRB*, 187 F. 2d 298 (C. A. 7), enf. 89 NLRB 1490.

Court has found that Congress intended the *procedures* for the prevention of unfair labor practices to be *exclusive* and has therefore prohibited the *duplication of remedy* with regard to such conduct by the State.

> "So far as appears from the Committee Reports, however, Section 10 (a) was designed, as its language declares, merely to preclude conflict in the administration of remedies for the practices proscribed by Section 8." *Algoma Plywood Co. v. Wisconsin Board,* 336 U. S. 301, 306.
>
> "The conflict lies in remedies, not rights." *Garner v. Teamsters Union,* 346 U. S. 485, 498.
>
> "In *Garner* the emphasis was not on two conflicting labor statutes but rather on two similar remedies, one state and one federal, brought to bear on precisely the same conduct." *Weber v. Anheuser-Busch,* 348 U. S. 468.

The conclusion is inescapable from these cases that where the Federal Government and the Labor Management Relations Act specifically regulate a course of conduct, the States may not regulate the same course of conduct in the same manner. The cases of *Allen-Bradley Local v. Wisconsin Employment Relations Board,* 315 U. S. 740, and *UAW-AFL v. Wisconsin Employment Relations Board,* 336 U. S. 245 (the so-called *Briggs-Stratton* case) cannot suport the conclusion reached below. We have alreday noted that the basis for the decision in *Allen-Bradley* was that the National Labor Relations Act, prior to the 1947 amendments, did *not* regulate mass picketing, threats of violence by unions and employees, and similar conduct. *Allen-Bradley* was accordingly explained in *Anheuser-Busch* as follows:

> "The Court held that such conduct was not subject to regulation by the federal Board, either by prohibition or by protection."

But now "such conduct" *is* subject to prohibition by the Federal Act and Board.

By the same token, a state injunction against repeated unannounced work stoppages was upheld in the *Briggs-Stratton* case for the reason such conduct was neither protected nor forbidden by the Federal Act. *Thus there was no existing or possible conflict or overlapping between the authority of the Federal and State boards.* In the instant case, however, the conduct involved *is* prohibited by the Federal Act thus making *Briggs-Stratton* inapplicable.

Certain *dicta* appearing in recent decisions of this court, however, cast doubt upon the conclusion that Minnesota acted beyond its authority in this case. These *dicta* leave open the door for speculation concerning the continued vitality of the *Allen-Bradley* case, in spite of the 1947 Taft-Hartley amendments to the National Labor Relations Act. Thus, in *Garner* it was said the states may, under *Allen-Bradley*, exercise "historic powers" over "traditional" matters such as public safety and order, etc. And most recently this Court said in *Weber v. Anheuser-Busch, supra*, in striking down a state injunction:

> "We do not read this as an unambiguous determination that the IAM's conduct amounted to the kind of mass picketing and overt threats of violence which under the *Allen-Bradley Local* case give the state court jurisdiction."[10]

(This statement seems to us inconsistent with the *explanation* of *Allen-Bradley* contained earlier in that opinion and referred to above.)

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[10] See also *UAW-AFL v. Wisconsin Employment Relations Board*, 336 U. S. 245, 253; *International Union v. O'Brien*, 339 U. S. 454 at 459.

These *dicta*, at best may be an indication that the authority of the states to regulate conduct of the sort involved here is still open for determination. If that is so, this Court should fully hear this case to explore this problem and resolve it.[11] We submit the logic of its decisions requires, in any event, the conclusion that the states, in regulating mass picketing, threats of violence, etc. in labor disputes, may not, through the enforcement of State *labor* policy as declared in a State labor act, duplicate the *exclusive* federal procedure for prohibiting such unfair labor practices, whatever their continued authority may be to prohibit or punish such conduct in the traditional manner by utilizing criminal laws of general applicability or other "historic" means.[12]

We believe the decisions of this Court compel the conclusion that 179.11, 179.13 and 179.14 of Minnesota Statutes 1953, insofar as applicable to cases within the jurisdiction of the National Labor Relations Board, must be declared unconstitutional. To hold otherwise would be to establish that the instant case constitutes an exception to the rule of *Garner, Anheuser-Busch, and General Drivers, supra*, that the states may not enjoin unfair labor practices which come under the jurisdiction of the National Labor Relations Board. To affirm the decision below would qualify those holdings to mean that a state may

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[11] As was said in the *Anheuser-Busch* case: "* * * the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much.' 346 U. S., at 488. This penumbral area can be rendered progressively clear only by the course of litigation."

[12] Thus the decision in the case of *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, need not be reversed for appellants to prevail here, for in *Laburnum* "* * * the violent conduct was reached by a remedy having no parallel in, and not in conflict with, any remedy afforded by the federal Act." *(Weber v. Anheuser-Busch, supra.)*

enjoin *some* unfair labor practices.[13] If this qualification is to be added, it would mean exclusive jurisdiction of theNational Labor Relations Board over some, concurrent jurisdiction over other, unfair labor practices. This would, necessarily require formulation of some rule defining *which* unfair labor practices fall within the field of concurrent jurisdiction. Would such a rule hinge on some phrase such as "violence" or "illegality" or, as was recently suggested in *The Supreme Court, 1954 Term*, 69 Harvard Law Review, 119 at 180, "conduct objectionable in itself"? This would obviously necessitate the very "case by case" test of federal supremacy rejected by this Court in *Bethlehem Co. v. State Board*, 330 U. S. 767, 776. Even if this line could be drawn and an area of concurrent jurisdiction established, it would do clear violence to the Congressional intent which, as expressed in the Taft-Hartley amendments, was to provide an exclusive remedy for union as well as employer unfair labor practices. To this end, Congress entered the field, provided substantive rules, and charged a central and expert agency with their interpretation and enforcement, thereby avoiding conflicts and confusion resulting from exercise of local authority in the

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[13] Such a qualification would be contrary to the intent of Congress as indicated in Section 10a of the National Labor Relations Act, which states in part:

"Prevention of Unfair Labor Practices—Powers of Board generally

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging *in any unfair labor practice* (listed in Section 8 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *"

The duplication by the State of the federal remedy cannot be illustrated better than to quote the statutory provision pursuant to which the state action was brought: "When any *unfair labor practice* is threatened or committed, a suit to enjoin *such practice* may be maintained in the District Court of any county wherein *such practice* occurs, or is threatened." [Italics supplied.] Minn. Statutes, Sec. 179.14.

solution of what Congress deemed to be an interstate and national problem. As this Court recognized in *Bus Employees v. W. E. R. B.*, 340 U. S. 383, 397:

> "Congress demonstrated that it knew how to cede jurisdiction to the states." [Cession proviso in 29 U. S. C. 160 (a); Appendix "B" *infra*].

The Minnesota Supreme Court laid great stress on the State's historic powers to deal with violence. Accepting the premise that a State may regulate acts of violence, the conclusion cannot be that it may do so *in any manner conceivable*. We submit a State may not, under the guise of regulating violence, pass laws defining unfair labor practices which coincide with the laws of the Federal Government, and provide a remedy for such unfair labor practices where an adequate and exclusive remedy has been provided by the Federal Government which *includes* temporary as well as final relief [29 U. S. C. 160 (j); Appendix "B" *infra*]. In such a case the Minnesota Labor Relations Law cannot be applied in coincidence with, as complementary to, or in opposition to the National Labor Relations Act.

The questions thus raised are of wide concern. The court below cited the recent decision of *Wisconsin Employment Relations Board v. United Automobile, Aircraft and Agricultural Implement Workers, CIO, etc.*, 269 Wis. 578, 70 N. W. 2d 191. The Supreme Court of Wisconsin, facing substantially the same facts and legal questions present in the case at bar, upheld a state injunction in reliance upon *Allen-Bradley* and the very dicta of this Court referred to by the Court below here.[14] In the Wisconsin case, as here, conduct was enjoined under the state labor act which was also an unfair labor practice under the

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[14] An appeal to this Court in the Wisconsin case was docketed on November 21, 1955 as No. 530.

National Labor Relations Act as amended. The state-federal conflict in that case is especially glaring in that the *very* conduct enjoined by the State Board as an unfair labor practice under the Wisconsin Employment Peace Act is also the subject of *active* consideration in an unfair labor practice proceeding under the federal statute, having been pleaded there by the employer (who filed the *state* complaint) in defense of unfair labor practices charges. Numerous other states have enacted labor statutes containing provisions similar to those in the Minnesota and Wisconsin Acts (as well as the National Labor Relations Act as amended) thus inviting the same federal-state conflict present in the case at bar (as well as in the Wisconsin case mentioned above). See compilation of state statutes at 35 Labor Relations Reference Manual 3032.

We submit the authority of the states to regulate labor relations, as was done here, is in need of definitive settlement and that therefore the question presented by this appeal is substantial and important.[15]

Respectfully submited,

HAROLD A. CRANEFIELD,
*Attorney for Appellants.*

FRANCIS X. HELGESEN,
KURT L. HANSLOWE,
*Of Counsel for Appellants.*

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[15] If it is deemed by the Court that the decision below constitutes a denial of asserted federal rights rather than a validation of the state statute as against the contention of its repugnancy to the Constitution and laws of the United States, it is respectfully urged that by reason of the importance of the questions involved, the Court deem the present jurisdictional statement to be in the nature of an application for certiorari under 28 U. S. C., Section 1257 (3), and such application be entertained. 28 U. S. C., Section 2103. *Charleston Federal Savings and Loan Association, et al. v. Alderson*, 324 U. S. 182, 187; 65 Sup. Ct. 624, 628.

# APPENDIX A

## MINNESOTA STATUTES 1953

Section 179.10 (1), page 1636:

"179.10 *Joining labor organizations; uniting for collective bargaining.* (1) Employees' right of self-organization. Employees shall have the right of self-organization and the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall have the right to refrain from any and all such activities."

Section 179.11 (6), (7), (10), pages 1636-37:

"179.11 *Unfair labor practices by employees.* It shall be an unfair labor practice: (6) For any person to interfere in any manner with the operation of a vehicle or the operator thereof when neither the owner nor operator of the vehicle is at the time a party to a strike;

(7) For any employee, labor organization, or officer, agent, or member thereof, to compel or attempt to compel any person to join or to refrain from joining any labor organization or any strike against his will by any threatened or actual unlawful interference with his person, immediate family or physical property, or to assault or unlawfully threaten any such person while in pursuit of lawful employment.

(10) The violation of clauses (2), (3), (4), (5), (6), (7), (8) and (9) of this section are hereby declared to be unlawful acts."

Section 179.13, page 1637:

"179.13 *Interferences which are unlawful.* (1) It shall be unlawful for any person at any time to interfere with the free and uninterrupted use of public roads, streets, highways or methods of transportation or conveyance or to wrongfully obstruct ingress to and egress from any place of business or employment.

(2) It is an unfair labor practice for any employee or labor organization to commit an unlawful act as defined in subdivision 1 of this section."

Section 179.14, page 1638:

"179.14. *Injunctions; temporary restraining orders.* When any unfair labor practice is threatened or committed, a suit to enjoin such practice may be maintained in the district court of any county wherein such practice has occurred or is threatened. In any suit to enjoin any of the unfair labor practices set forth in sections 179.11 and 179.12, the provisions of sections 185.02 to 185.19 shall not apply. No court of the state shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of the violation of sections 179.11 and 179.12, as herein defined, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court to the effect that the acts set forth in sections 179.11 and 179.12 have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained. No temporary restraining order may be issued under the provisions of sections 179.01 to 179.17 except upon the testimony of witnesses produced by the applicant in open court and upon

a record being kept of such testimony nor unless the temporary restraining order is returnable within seven days from the time it is granted which shall be noted on the order of the court. It shall be the duty of the court to give the trial or hearing of any suits or proceedings arising under this section precedence over all other civil suits which are ready for trial. Failure of the trial court to decide a motion for a temporary injunction within seven days from the date the hearing thereon is concluded shall dissolve any restraining order issued therein without further order of the court. Failure of the trial court to decide any suit brought under this section within 45 days from the date the trial was ended shall dissolve any restraining order or temporary injunction issued therein without further order of the court."

# APPENDIX B

## NATIONAL LABOR RELATIONS ACT, 61 STAT. 140 ff, 29 U. S. C.

Section 157, Section 158 (b)(1), Section 160 (a) and (j):

"Sec. 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

"Sec. 158 (b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances;"

"Section 160 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such

agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith."

"Section 160 (j). The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper."

## APPENDIX C

### OPINION OF MINNESOTA SUPREME COURT

No. 86 Rice County

Nelson, J.

Took no part, Thomas Gallagher, J.

McQuay, Inc.,
Respondent,
v.
International Union, United Automobile Aircraft and Agricultural Implement Workers of America, C.I.O., and its Locals 125 and 1282, et al.,
Relators. } 36,559

Endorsed
Filed July 15, 1955
Frank Larkin, Clerk
Minnesota Supreme Court

SYLLABUS

The federal Labor Management Relations Act does not deprive the state courts of the state of Minnesota, where injunctive relief is invoked under the state labor relations act (M. S. A. c. 179) to prevent violence and order unions to cease and desist from violating unfair labor practice provisions as therein enumerated, when contrary to its provisions engaged in obstructing highways and plant entrances interfering with vehicles and their operators; mass picketing; and assaults and threats of assaults, coer-

cion, intimidation, and other inteferences with plaintiff's personnel.

The order to show cause is quashed and the action of the trial court is sustained.

## OPINION

Nelson, Justice.

The plaintiff, McQuay, Inc., filed its complaint in the district court for Rice county, Minnesota, invoking the injunctive powers of the state courts alleging that the defendants were engaging in certain unfair labor practices in violation of M. S. A. 179.11, 179.13, and 179.14 of the Minnesota labor relations act, c. 179. The district court thereupon issued a temporary restraining order on November 12, 1954, and a temporary injunction on November 22, 1954. Thereafter, on November 30, 1954, this court upon relation of defendants issued an order directed to the Honorable Axel B. Anderson, judge of the district court, fifth judicial district, to show cause why a permanent and absolute writ of prohibition should not issue restraining the judge from enforcing the temporary injunction as issued.

No factual issues are presented in the case. The plaintiff is a Minnesota corporation engaged in the manufacture and shipment of its products in the cities of Minneapolis and Faribault, Minnesota. That it is engaged in interstate commerce is not disputed. The defendant union had been on strike since approximately June 10, 1954, at the plaintiff's plant at Faribault, Minnesota. The plaintiff alleged in its complaint that during the course of the strike the defendants did and threatened to do the following things:

"(a) Interfered with the operation of vehicles and the operators thereof when neither the owners nor operators of said vehicles were at the time parties to any strike;

"(b) Compelled or attempted to compel a number of persons to join a strike against their respective individual wills by threatened and by actual unlawful interference with the person or persons, immediate family or families or physical property of, and by assaulting or unlawfully threatening, said person or persons while they were in pursuit of lawful employment;

"(c) Interfered with the free and uninterrupted use of public roads in the City of Faribault, Rice County, Minnesota, and methods of transportation or conveyance thereon, and wrongfully obstructed ingress to and egress from plaintiff's plant in Faribault, Minnesota, the same then and there being a place of business and employment;

"(d) By mass picketing and a show or demonstration of force and threats of force and by other means, the defendants and other persons or parties to plaintiff unknown, but acting in concert with or as agents or as representatives of said defendants, have intimidated and coerced plaintiff's employees, former employees, and prospective employees, in violation of the statutes as hereinbefore alleged and in further violation of the rights of said employees, former employees, or prospective employees under Section 179.10 of Minnesota Statutes 1953."

The court, after a full hearing at which defendants' counsel appeared, found that the allegations of plaintiff's complaint and the facts stated by the personnel manager at the Faribault plant in a supporting affidavit were true. The court further found that these acts constituted a violation of the Minnesota labor relations act, c. 179, spe-

cifically §§179.11 and 179.13 thereof;[1] that the plaintiff was without other adequate remedy; and that the National Labor Relations Act, as amended by the Labor Management Relations Act of 1947, was without application since jurisdiction had been acquired by the district court of this state. The court issued a temporary injunction enjoining defendants from the commission of violence, enumerating the following acts as prohibited: Obstructing highways and plant entrances; interfering with vehicles and their operators; mass picketing; and assaults and

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[1] Section 179.11 provides as follows:

"It shall be an unfair labor practice:

* * * * *

"(6) For any person to interfere in any manner with the operation of a vehicle or the operator thereof when neither the owner nor operator of the vehicle is at the time a party to a strike;

"(7) For any employee, labor organization, or officer, agent, or member thereof, to compel or attempt to compel any person to join * * * any strike against his will by any threatened or actual unlawful interference with his person, immediate family, or physical property, or to assault or unlawfully threaten any such person while in pursuit of lawful employment."

Section 179.11 (10) provides that violations of (6) and (7) thereof are unlawful acts.

Section 179.13 provides as follows:

"Subdivision 1. It shall be unlawful for any person at any time to interfere with the free and uninterrupted use of public roads, streets, highways or methods of transportation or conveyance or to wrongfully obstruct ingress to and egress from any place of business or employment.

"Subd. 2. It is an unfair labor practice for any employee or labor organization to commit an unlawful act as defined in subdivision 1 of this section."

Section 179.14 provides in substance that when any unfair labor practice is threatened or committed, a suit to enjoin the same may be maintained in the district court of any county wherein such practice has occurred or is threatened and that in any such suit the provisions of §§185.02 to 185.19 shall not apply.

See, also, provisions as to rights of employees, former employees, or prospective employees under §179.10.

threats of assaults, coercion, intimidation, and other interferences with plaintiff's personnel.

The sole issue for determination now before this court is whether the state courts of Minnesota have the power when proceeding under the Minnesota labor relations act, to curb and prevent violence arising in the course of a labor dispute affecting interstate commerce. Did the trial court in this labor dispute have jurisdiction to enjoin the specific acts of alleged violence, and the continuation thereof, the court in nowise by its order interfering with peaceful picket line activity?

Defendants contend that congress since the passage of the Labor Management Relations Act of 1947 has preempted the field of labor relations to the extent of taking from the states the control of acts of violence in labor disputes affecting interstate commerce despite the decision to the contrary by the United States Supreme Court in Allen-Bradley Local v. Wisconsin Board, 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154, and the courts' adherence in general to the doctrine therein announced. The defendants make two specific points in their argument: First, that the Allen-Bradley decision was rendered in 1942 before the amendment of the National Labor Relations Act and thus it construed the National Labor Relations Act of that day which dealt only with unfair labor practices on the part of employers and left employee unfair labor practices to be dealt with and controlled by the states; but that, since the National Labor Relations Act was amended in 1947 so as to deal with employee unfair labor practices as well, the Labor Management Relations Act now takes from the states any and all control over violence when invoked in a labor dispute affecting interstate commerce. Second, the defendants contend that, even

if it be true that the states are still free under the Taft-Hartley Act[2] to exercise control over violence in a labor dispute affecting interstate commerce, such control may not be exercised if the state's labor act under which the procedure is taken makes such conduct an unfair labor practice and the injunctive power is invoked under such statute. Suffice it to say that practically identical arguments have been made in the cases cited, both state and federal, since the Taft-Hartley Act, yet no court of final authority has cut into the freedom of the states to exercise its inherent police power as a sovereign state whenever it was found necessary to deal with acts of violence or other threats to the peace within its borders.

A long line of decisions by the United States Supreme Court has demonstrated throughout that, while there has been a development cumulative in its effect restricting the power of the states to act in labor disputes affecting interstate commerce and congress has pre-empted the field in closing to state regulation the field of peaceful strikes in industries affecting such commerce, yet the court in these decisions has never failed to make it clear that congress has not withdrawn from the state its inherent power under its constitutional prerogatives to act to prevent violence and insure public safety to every citizen alike. See, Allen-Bradley Local v. Wisconsin Board, 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154; Hill v. Florida, 325 U. S. 538, 65 S. Ct. 1373, 89 L. ed. 1782; Bethlehem Steel Co. v. State Board, 330 U. S. 767, 67 S. Ct. 1026, 91 L. ed. 1234; La Crosse Tel. Corp. v. Wisconsin Board, 336 U. S. 18, 69 S. Ct. 379, 93 L. ed. 463; Auto. Workers v. Wisconsin Board, 336 U. S. 245, 69 S. Ct. 516, 93 L. ed. 651; Algoma Plywood Co. v. Wisconsin Board, 336 U. S. 301, 69

[2] The Labor Management Relations Act of 1947.

S. Ct. 584, 93 L. ed. 691; Auto. Workers v. O'Brien, 339 U. S. 454, 70 St. Ct. 781, 94 L. ed. 978; Bus Employees v. Wisconsin Board, 340 U. S. 383, 71 S. Ct. 359, 95 L. ed. 364; Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. ed. 228; United Workers v. Laburnum Corp., 347 U. S. 656, 74 S. Ct. 833, 98 L. ed. 1025; Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 75 S. Ct. 480, 99 L. ed. —.

By the same decisions the United States Supreme Court continues to rule that congress has not withdrawn from the states the right to act to prevent violence; that congress designedly left open an area for state control, it having manifested no intention thus far to exclude states from exercising their police power. While the federal labor board has the power to forbid a strike, because it is one that the federal act made illegal, congress has given no one the power to forbid one because its method is illegal—even if the illegality of the strike were to consist of actual or threatened violence to persons or destruction of property. So far the policing of such conduct has been left wholly to the states. In Auto. Workers v. Wisconsin Board, *supra*, in 1949, following the amendment of the National Labor Relations Act, the United States Supreme Court said in effect that, there being in that case also evidence of considerable injury to property and intimidation of other employees by threats, under the circumstances no one questions the state's power to police coercion by those methods.

Our own court has dealt with certain aspects of this problem in recent years in Norris Grain Co. v. Seafarers' International Union, 232 Minn. 91, 46 N. W. (2d) 94; Faribault Daily News, Inc. v. International Typographical Union, 236 Minn. 303, 53 N. W. (2d) 36; State ex rel. International Union, Local 1174 v. Finkelnburg, 236 Minn. 349, 53 N. W. (2d) 128.

In Faribault Daily News, Inc. v. International Typographical Union, 236 Minn. 303, 322, 53 N. W. (2d) 36, 46, this court said:

> "* * * The [U. S. Supreme] court has definitely stated that the federal act is not a police act, and that in areas where the exercise of police power is called for the state and its courts have jurisdiction. In such a case, congress has not protected the union conduct which the state has forbidden, and the conduct is governed by the state."

The courts of other states have uniformly sustained the power of the state courts to enjoin violence in labor disputes, even in those cases where interstate commerce was affected. A most recent one is Wisconsin Board v. United Automobile, etc. — Wis. — 70 N. W. (2d) 191.[3]

We think it fair to say that the defendants concede that state power to curb violence remains unimpaired but for the exceptions they contend for in the present situation. Their contention here is that the activities in the instant

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[3] Oil Workers International Union v. Superior Court, 103 Cal. App. (2d) 512, 230 P. (2d) 71; Williams v. Cedartown Textiles, Inc., 208 Ga. 659, 68 S. E. (2d) 705; Thayer Co. v. Binnall, 326 Mass. 467, 95 N. E. (2d) 193; Southern Bus Lines, Inc. v. Amalgamated Assn., 205 Miss. 354, 38 So. (2d) 765; State ex rel. Allai v. Thatch, 361 Mo. 190, 234 S. W. (2d) 1; Erwin Mills v. Textile Workers Union, 234 N. C. 321, 67 S. E. (2d) 372; Royal Cotton Mill Co. v. Textile Workers Union, 234 N. C. 545, 67 S. E. (2d) 755; Erwin Mills v. Textile Workers Union, 235 N. C. 107, 68 S. E. (2d) 813; Rice & Holman v. United Elec. Local 134, 3 N. J. Super. 258, 65 A. (2d) 638; Goodwins, Inc. v. Hagedorn, 303 N. Y. 300, 101 N. E. (2d) 697; Art Steel Co. v. Velazquez, 280 App. Div. 76, 111 N. Y. S. (2d) 198; Wortex Mills v. Textile Workers Union, 369 Pa. 359, 85 A. (2d) 851; Wortex Mills v. Textile Workers Union, 380 Pa. 3, 109 A. (2d) 815; Lodge Mfg. Co. v. Gilbert, 195 Tenn. 403, 260 S. W. (2d) 154; International Molders Union v. Texas Foundries (Tex. Civ. App.), 241 S. W. (2d) 213, reversed on other grounds, 151 Tex. 239, 248 S. W. (2d) 460.

case constitute violations of §8(b)(1)(A) of the National Labor Relations Act as amended[4] and that this supplies justifiable grounds and a legal basis for saying that the state courts of Minnesota may not assert jurisdiction over them in an action brought under our state labor relations act, and, this, because it was brought under the state labor relations act and not by some other procedure invoking injunctive relief to protect the peace. To this our answer must be, after an examination of the provisions of the acts in question and the numerous decisions, state and federal, bearing upon the points involved, that the courts of this state may enjoin the commission of violence, prohibited in the state labor act, even if that violence also constitutes a violation of the federal labor act. The authorities support that conclusion. It has been reiterated and reaffirmed that, while the general principle is that the states have no jurisdiction over activities which constitute unfair labor practices under the National Labor Relations Act and the Labor Management Relations Act, the power of the states being restricted thereby, nevertheless the inherent police power of each sovereign state to deal with acts of violence or other threats to the peace has at the same time received recognition and emphasis as to its continuing validity.

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[4] 61 Stat. 141, 29 USCA, §158(b)(1)(A), reads as follows:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 * * *."

61 Stat. 140, 29 USCA, §157, reads as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities * * *."

We are privileged to live, in this nation, under the protection of a representative free system of government with well-known checks and balances applied as between the executive, the legislative, and the judicial departments. It is a dual system of government. The individual citizen in his sovereign capacity and his enjoyment of local self-government under which liberty developed and became a reality is now as before surrounded by the township, the county, the state, the nation, like so many concentric circles, each serving a double purpose, each invested with the greatest possible jurisdiction. Thus, the court in the Allen-Bradley case gave its recognition to an existing local situation when it said that where a state acts to preserve law and order and to prevent violence it is (315 U. S. 749, 62 S. Ct. 825, 86 L. ed. 1164) "exercising its historic powers over * * * traditionally local matters." No argument thus far has ever convinced either congress or the courts of this country that we ought wholly to break down the lines which separate the states and thus compound the American people into one common mass. So, policing of conduct such as involved here has been left to the states. No decision cited has cast any doubt upon it, and the states are left to continue their historic powers over traditionally local matters, and in the last analysis that is precisely what is involved here. A state has the primary responsibility for the protection of its citizens, and each state, a republic within itself, indestructible and yet a part of the indissoluble union as a whole, is charged with the power to discharge that responsibility, as a basic concept of our system, which none can thrust aside lightly. The state is in the first instance responsible for the public safety, the welfare, the peace and the health of the citizen. And the principle is thoroughly established that the exercise by the state of its police power is valid if not super-

seded by federal action and is superseded only where the repugnance or conflict is so direct and positive that two acts, one state and one federal, cannot be reconciled or consistently stand together. Kelly v. Washington, 302 U. S. 1, 58 S. Ct. 87, 82 L. ed. 3; see, Maurer v. Hamilton, 309 U. S. 598, 60 S. Ct. 726, 84 L. ed. 969.

In Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. ed. 228, the employer sought to enjoin peaceful picketing by state action. Of course, that situation is clearly distinguishable from the situation presented in the case at bar, and the Supreme Court of the United States distinguished the situation there from that in the Allen-Bradley case by saying (346 U. S. 488, 74 S. Ct. 164, 98 L. ed. 238):

> "This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. *International Union v. Wisconsin Board*, 336 U. S. 245, 254. *Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' Allen-Bradley Local v. Wisconsin Board*, 315 U. S. 740, 749." (Italics supplied.)

Recently in United Workers v. Laburnum Corp., 347 U. S. 656, 74 S. Ct. 833, 98 L. ed. 1025, the court therein repeated the language quoted above from the Garner case with approval, and more recently, in 1955, the United States Supreme Court in Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 482, 75 S. Ct. 480, 488, 99 L. ed. —, —, in

setting aside a state court's injunction against picketing and commenting on the nature of the picketing and the law applicable to it, said:

> "* * * We do not read this as an unambiguous determination that the IAM's conduct amounted to the kind of mass picketing and overt threats of violence which under the Allen-Bradley Local case give the state court jurisdiction."

So, in reliance on the pronouncements of the United States Supreme Court in its recognition of the exercise of the state's historic powers over traditionally local matters leaving the policing of such conduct wholly to the states, the supreme court of the state of Wisconsin recently in Wisconsin Board v. United Automobile, etc., — Wis. —, —, 70 N. W. (2d) 191, 195, felt clearly justified in saying, referring to the Allen-Bradley case, that "Neither age nor new legislation have withered the authority of that decision when the facts to which it applied are present, as shown by the foregoing citations."

It is therefore clear that the contention of the defendants that the trial court below was without jurisdiction because respondent's action was brought under the Minnesota labor relations act, c. 179, is without merit. The state having the power to act, that power is not affected by the form that is taken in the exercise of that power. On the authorities cited and in the absence of any controlling decision to the contrary, this court must reject defendants' challenge to the jurisdiction of the trial court and quash the order to show cause.

The order to show cause is quashed and the action of the trial court is sustained.

MR. JUSTICE THOMAS GALLAGHER took no part in the consideration or decision of this case.

## APPENDIX D

### TRANSCRIPT OF JUDGMENT

State of Minnesota, Supreme Court

No. 36,559

McQuay, Inc.,
Respondent,
v.

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O. and its Locals 125 and 1282; Edward R. Murnane; Maurice Reopelle; John Smith, Lewis Holl; Henry Schiks, Lester Mahoney, James Reed, Ralph Dwyer, Hubert Dickey and Ralph Brown, individually and as officers or official representatives of said International or said Local Unions hereinbefore named; and Louis Meyer; Raymond Weke; Ed Hiersche; James Harding, Raymond Ress, Don McIver, Thomas Hoven, Donald Morris, Maurice Devitt, James Mahagnoul, Keith Hiersche, Warren Cross, Wilfred Juaire, and all other persons and parties acting in concert with or as agents or representatives of any of the foregoing, and each of them,

Relators.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order to show cause issued to the District Court within and for the County of Rice be and the same hereby is in all things quashed and the action of the trial court sustained.

And it is further determined and adjudged that respondent herein, do have and recover of relators herein the sum and amount of One Hundred Sixteen and 95/100 Dollars, ($116.95) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed Aug. 9, 1955.

By the Court

Attest: Frank Larkin,
Clerk.

---

STATEMENT FOR JUDGMENT

Statutory Costs, $25.00; Printer, $91.95; Total, $116.95.

Satisfaction of Judgment filed.

Therefore the above judgment is duly satisfied in full and discharged of record.

Supreme Court,
State of Minnesota—ss.

I, Frank Larkin, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol in the City of St. Paul Aug. 9, 1955.

Frank Larkin, Clerk,
By Mae Sherman, Deputy.

3/4

FILED
JAN 10 1956
HAROLD B. WILEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

## No. 565

**INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., AND ITS LOCALS 125 AND 1282, ET AL,**

*Appellants,*

VS.

**AXEL B. ANDERSON, District Judge,**
**and**
**McQUAY, INC.,**

*Appellees.*

APPEAL FROM THE SUPREME COURT OF MINNESOTA

## MOTION TO DISMISS

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Of Counsel for Appellee McQuay, Inc.

1956—Northwest Brief Printing Co., Minneapolis 15, Minn.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

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## No. 565

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., AND ITS LOCALS 125 AND 1282, ET AL,

*Appellants,*

vs.

AXEL B. ANDERSON, District Judge,

and

McQUAY, INC.,

*Appellees.*

---

APPEAL FROM THE SUPREME COURT OF MINNESOTA

---

## MOTION TO DISMISS

Pursuant to Rule 12 of the Revised Rules of this Court, appellee McQuay, Inc.,[1] moves to dismiss the instant appeal on the ground that the question presented is so unsubstantial as not to require further argument or plenary consideration.

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[1]For purposes of brevity, appellee McQuay, Inc., will hereafter be referred to as "McQuay."

## QUESTION PRESENTED

Whether the State of Minnesota has been divested by Congress of its historic power to curb and prevent violence and breaches of the peace under its own statutes merely because the activity happens to occur in the course of a strike against an employer whose business affects interstate commerce.

## BRIEF IN SUPPORT OF MOTION TO DISMISS

### Facts Material to Issue.

Following their certification by the National Labor Relations Board[2] as the collective bargaining representative of the employees at McQuay's Faribault, Minnesota, plant, appellant unions commenced a strike. However, this was not a strike conducted in the usual manner. *This was a strike in which appellants resorted to violence to accomplish their ends.* McQuay commenced proceedings before the State District Court[3] under the Minnesota Labor Relations Act[4] seeking to stop the violence. After a full hearing at which appellants' counsel appeared, the Court found[5] that appellants had engaged in, and unless restrained, would continue to engage in, the acts of violence alleged in the pleadings.[6]

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[2]McQuay concedes, and has conceded throughout this proceeding, that its business affects interstate commerce within the National Labor Relations Act, as amended, and that its business volume meets the current jurisdictional criteria of the Board.

[3]The District Court of Rice County, Minnesota, is the State Court of general jurisdiction sitting where the violence took place.

[4]*Minnesota Statutes*, 1953, Sections 179.11(6), (7), (10); *Minnesota Statutes*, 1953, Section 179.13; *Minnesota Statutes*, 1953, Section 179.14. See Appendix "A" attached to Appellants' Jurisdictional Statement.

[5]See pages 25-26 in the printed Record in the Supreme Court of Minnesota.

[6]The pleadings which the Court found to be factual alleged that appellants had committed the following acts of violence:

"(a) Interfered with the operation of vehicles and the operators thereof when neither the owners nor operators of said vehicles were at the time parties to any strike;

*There is not now, and there never has been, any doubt that appellants did, in fact, commit these acts of violence.* In due course, a temporary injunction was issued enjoining appellants "from the commission of violence, enumerating the following acts as prohibited: Obstructing highways and plant entrances; interfering with vehicles and their operators; mass picketing; and assaults and threats of assaults, coercion, intimidation, and other interferences with [McQuay's] personnel."[7] Peaceful picketing is, in no way, restricted by the injunction. Appellants applied to the Supreme Court of Minnesota for a writ of prohibition and, after proceedings under an order to show cause, judgment

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"(b) Compelled or attempted to compel a number of persons to join a strike against their respective individual wills by threatened and by actual unlawful interference with the person or persons, immediate family or families or physical property of, and by assaulting or unlawfully threatening, said person or persons while they were in pursuit of lawful employment;

"(c) Interfered with the free and uninterrupted use of public roads in the City of Faribault, Rice County, Minnesota, and methods of transportation or conveyance thereon, and wrongfully obstructed ingress to and egress from plaintiff's plant in Faribault, Minnesota, the same then and there being a place of business and employment;

"(d) By mass picketing and a show or demonstration of force and threats of force and by other means, the defendants and other persons or parties to plaintiff unknown, but acting in concert with or as agents or as representatives of said defendants, have intimidated and coerced plaintiff's employees, former employees, and prospective employees, in violation of the statutes as hereinbefore alleged and in further violation of the rights of said employees, former employees, or prospective employees under Section 179.10 of Minnesota Statutes 1953."

The Complaint appears in its entirety at pages 8-15 of the printed Record in the Supreme Court of Minnesota. The material allegations appear in the opinion of that Court—see Appendix "C," page 8a, attached to Appellants' Jurisdictional Statement.

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[7] See opinion of the Supreme Court of Minnesota, Appendix "C," pages 9a-9b, attached to Appellants' Jurisdictional Statement. The full text of the Writ of Temporary Injunction appears at pages 21-24 of the printed Record in the Supreme Court of Minnesota.

was entered against appellants on August 9, 1955, following an opinion rendered July 15, 1955.[8]

**The Unsubstantiality of the Question.**

This appeal presents the question of whether the State of Minnesota has been divested by Congress of its historic power to curb and prevent violence and breaches of the peace under its own statutes merely because the activity happens to occur in the course of a strike against an employer whose business affects interstate commerce.[9] We submit that this is a question which is so thoroughly settled by the utterances of this Court that no further argument or plenary consideration is necessary.

At the outset, and before considering the law applicable to the instant case, it seems to us to be important to crystalize the issue presented. To say that this is a case in which the State of Minnesota sought to regulate activities which may be unfair labor practices under the National Labor Relations Act, as amended,[10] is to tell only a small part of the story. This is a case in which the State of Minnesota, acting under its own statutes, exercised its police power to preserve the peace and prevent a reoccurrence of violence which had erupted within its own borders. We submit that, under the applicable law, the State had a clear right to do so even though its action may have involved an area which might be subject to possible federal regulation.

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[8]See Appendix "C" and Appendix "D" attached to Appellants' Jurisdictional Statement. McQuay concedes that the judgment of the Supreme Court of Minnesota is a final judgment within the meaning of 28 *U.S.C.*, Sec. 1257.

[9]We agree with appellants that this question was properly raised and thoroughly explored at every stage of the State Court proceedings.

[10]61 *Stat.* 136; 29 *U.S.C.*, Secs. 141-197. See Appendix "A" attached to Appellants' Jurisdictional Statement.

There is no doubt that the National Labor Relations Act has foreclosed from state regulation large areas of the field of labor relations affecting interstate commerce. The decisions of this Court make that very clear.[11] However, as this Court has carefully pointed out, the Act also "leaves much to the states." *Garner v. Teamsters Union*, 346 U.S. 485, 488 (1953). We think it clear that the prevention of a reoccurrence of violence falls within the area which has been left to the states.

The pronouncements of this Court sustaining state power to prevent a reoccurrence of picket line violence are clear and unequivocal. In *Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740 (1942), the Court sustained the action of the State of Wisconsin in enjoining the *very types of violence*[12] found in the case at bar. In doing so, the Court spoke of the state action as the exercise of "its historic powers over

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[11] *Hill v. Florida*, 325 U.S. 538 (1945);
*Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767 (1947);
*LaCrosse Telephone Corp. v. Wisconsin Board*, 336 U.S. 18 (1949);
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*Amalgamated Association v. Wisconsin Board*, 340 U.S. 383 (1951);
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*Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955);
*Teamsters Union v. American Tobacco Co.*, 348 U.S. 978 (1955).

[12] The Order of the Wisconsin Board in the *Allen-Bradley* case is set out in the opinion of this Court (315 U.S. 740, 744) in the following terms:

"Based upon its findings of fact and conclusions of law, the board ordered that the union, its officers, agents and members—

"(1) Cease and desist from:

(a) Mass picketing.

(b) Threatening employees.

(c) Obstructing or interfering with the factory entrances.

(d) Obstructing or interfering with the free use of public streets, roads, and sidewalks.

(e) Picketing the domiciles of employees."

Each of these acts is present in the case at bar with the exception of the picketing of domiciles. Moreover, in addition to the threatening of employees, the instant case involves actual physical assaults.

such traditionally local matters as public safety and order and the use of streets and highways." 315 U.S. 740, 749.

Appellants contend that the *Allen-Bradley* decision is no longer good law. In advancing this contention, they point to the fact that that case was decided in 1942 at a time when the National Labor Relations Act did not purport to regulate union or employee conduct. Pressing this point further, appellants argue that the rule of the *Allen-Bradley* case should not be followed today because the 1947 amendments to the National Labor Relations Act provide the federal regulation of union conduct which was not present in the earlier statute. However, to make this argument, appellants must not only distinguish the *Allen-Bradley* decision, but they must also discount or disregard the rather considerable body of pronouncements to be found in opinions of this Court in cases decided *after* the Federal statute was amended in 1947.

One such case is *International Union v. Wisconsin Board*, 336 U.S. 245 (1949). In that case (commonly known as the Briggs-Stratton case) the Court sustained an order of the Wisconsin Board enjoining recurrent, unannounced work stoppages. In doing so, the Court left no doubt as to the continued vitality of the *Allen-Bradley* decision by relying on it as an additional basis for decision, stating (336 U.S. 245, 253):

> "However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Relations Act of 1947, that 'Congress designedly left open an area for state control' and that the 'intention of Congress to exclude States from exercising their police power must be clearly manifested.' *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U.S. 740, 750, 749."

* * * * *

> "In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the State's power to police coercion by those methods."

The continuing force of the *Allen-Bradley* decision can also be seen in the more recent opinions of this Court, *including the very opinions on which appellants rely* in attacking the jurisdiction of the State Court. In *Garner v. Teamsters Union, supra*, the Court said (346 U.S. 485, 488):

> "Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state may still exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' *Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740, 749."

This same language was set forth at length in another recent decision. *United Workers v. LaBurnum Corp.*, 347 U.S. 656, 664 (1954). In *Weber v. Anheuser-Busch, Inc., supra*, this Court, in obvious recognition of state power to enjoin a reoccurrence of violence, stated (348 U.S. 468, 482):

> "We do not read this as an unambiguous determination that the IAM's conduct amounted to the kind of mass picketing and overt threats of violence which under the *Allen-Bradley Local* case give the *state court jurisdiction.*" (Italics supplied.)

Therefore, we submit that whatever may be the impact of the National Labor Relations Act on state power to regulate activity *of other types*, the pronouncements of this Court make it very clear that the states still have the power to enjoin violence of the type found in the case at bar.

Nor does the contention that appellants' activity amounts to an unfair labor practice under the National Labor Relations Act change this result. Appellants contend that their activity constitutes a violation of 61 *Stat.* 140(b)(1)(A),

29 *U.S.C.*, Sec. 158 (b) (1) (A). We do not necessarily agree.[13] However, we submit that even if appellants' activity were to constitute an unfair labor practice under the Federal Act, this would not deprive the State Court of jurisdiction. As this Court pointed out in *United Workers v. LaBurnum Corp., supra*, the legislative history of the 1947 amendments to the National Labor Relations Act shows an express intention to permit state regulation of violence, even where that violence constitutes a violation of the Federal Act. In the *LaBurnum* case the Court quoted Senator Taft, one of the sponsors of the 1947 amendments, in the following terms (347 U.S. 656, 668):

> "'*But suppose there is a duplication in extreme cases; suppose there is a threat of violence constituting violation of the law of the State.* Why should it not be an unfair labor practice? It is on the part of the employer. If an employer proceeds to use violence, as employers once did, if they use the kind of goon-squad tactics labor unions are permitted to use—and they once did—if they threaten men with physical violence if they join a union, they are subject to State law, and they are also subject to be proceeded against for violating the National Labor Relations Act. *There is no reason in the world why there should not be two remedies for an act of that kind.*' (Emphasis added.) 93 Cong. Rec. 4024."

In further recognition of the fact that state power to curb violence remains unimpaired, this Court equated state remedies with Section 8(b)(1)(A) of the Federal Act in the following passage from *Labor Board v. International Rice Milling Co.*, 341 U.S. 665, 672 (1951):

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[13]Unfair labor practices under 61 *Stat.* 140(b)(1)(A), 29 *U.S.C.*, Sec. 158(b), can only be committed by "a labor organization or its agents." In the instant case there has been no finding that the individual appellants were acting as agents for anyone. In contrast to the situation in the Wisconsin case (Docket No. 530) referred to in Appellants' Jurisdictional Statement (pp. 17-18), the acts of violence involved in the instant case have never been under consideration by the National Board.

> "In the instant case the violence on the picket line is not material. The complaint was not based upon that violence, as such. *To reach it, the complaint more properly would have relied upon §8(b)(1)(A) or would have addressed itself to local authorities.*" (Italics supplied.)[14]

Therefore, we submit that the pronouncements of this Court make it very clear that the State of Minnesota has not been divested of its "historic powers" to curb violence even where that violence also constitutes an unfair labor practice under the National Labor Relations Act.

Finally, appellants contend that the State Court was without jurisdiction because the action was brought under the Minnesota Labor Relations Act.[15] We submit that this contention is without merit. The short answer to appellants' claim lies in the decisions of this Court which have recognized state power to enjoin violence. In *Allen-Bradley* and *Briggs-Stratton* the state action was taken under the *Wisconsin Employment Peace Act* which condemned the violence *as an unfair labor practice.*[16] In each case this Court sustained the state action. Furthermore, the *Garner* case was one brought under the Pennsylvania Labor Relations Act,[17] but, nonetheless, this Court carefully pointed out that the holding of that case would not have been applicable were

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[14]Section 8(b)(1)(A) is but another designation for 29 *U.S.C.*, Sec. 158(b)(1)(A). Thus, in the passage quoted, the Court was speaking of the same section of the National Labor Relations Act which appellants claim was violated by their acts of violence.

[15]*Minnesota Statutes*, 1953, Sections 179.11 (6), (7), (10); *Minnesota Statutes*, 1953, Section 179.13; *Minnesota Statutes*, 1953, Section 179.14. See Appendix "A" attached to Appellants' Jurisdictional Statement.

[16]315 U.S. 740, 741, 742; 236 U.S. 245, 247, 248.

[17]346 U.S. 485, 487.

that a case of violence.[18] Such a distinction would not have been necessary if the State Court were precluded from enjoining violence under its State Labor Relations Act. Therefore, we submit that the mere fact that this action is brought under the Minnesota Labor Relations Act does not impair the power of the State to act.

## CONCLUSION

We respectfully submit that appellants present no substantial question for decision by this Court and that, therefore, the instant appeal should be dismissed.

Respectfully submitted,

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---

[18] In the *Garner* case, the Court pointed out (346 U.S. 485, 488):

"Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state may still exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' *Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740, 749."

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Office - Supreme Court, U.
FILED
JAN 30 1956
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

## No. 565

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, and its LOCALS 125 and 1282, et al.,
Appellants,
vs.
AXEL B. ANDERSON, District Judge, and McQUAY, INC.,
Appellees

## REPLY BRIEF ON BEHALF OF THE APPELLANTS

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IN THE

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OCTOBER TERM, 1955

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, and its LOCALS 125 and 1282, et al.,
Appellants,
vs.
AXEL B. ANDERSON, District Judge, and McQUAY, INC.,
Appellees

## REPLY BRIEF ON BEHALF OF THE APPELLANTS

### The Rule of Allen-Bradley

Appellee McQuay, Inc. argues that the *Allen-Bradley* case gives Minnesota authority to enjoin as unfair labor practices *under the State labor statute* conduct which constitutes unfair labor practices under the federal act, where threats of violence and disorder are involved. We disagree.

This Court held in *Allen-Bradley* that a state may, under its labor act, continue to regulate union conduct not protected or prohibited by the federal labor act. That proposition may still be true. But it has no application when, as here, the union conduct involved *is* regulated by the federal statute.

*Allen-Bradley* has also been cited by this Court for the proposition that the states continue to have authority to exercise traditional historic powers over the public peace and the use of streets and highways. That proposition, too, is inapplicable here. The case at bar does not represent an attempt by the State to enforce criminal laws of general applicability in the exercise of police power for the maintenance of the public peace or the regulation of traffic, or to take similar traditional measures cutting across labor relations laws. Rather, it represents the enforcement, by the State, of *labor relations policy* in the form of an injunctive unfair labor practice proceeding under a state labor act.

For McQuay to argue, as it does, that authority thus to enforce its own labor policy continues on the part of Minnesota is to ignore the rule of this Court's recent decisions that a state may not enjoin under a state labor act conduct which is an unfair labor practice under the federal labor statutes, and may not otherwise duplicate the exclusive federal remedy (which this Court views as preventive in character, as is the state remedy in the case at bar).[1] Nor can appellee's position be reconciled with the action

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[1] *Garner v. Teamsters Union*, 346 U. S. 485; *Weber v. Anheuser-Busch*, 348 U. S. 468; *General Drivers v. American Tobacco Company*, 348 U. S. 978; *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656; *Teamsters v. New York, New Haven and Hartford Railroad Company*, — U. S. —, No. 33 this term, decided January 9, 1956.

of Congress in 1947 of providing an exclusive procedure and remedy for union as well as employer unfair labor practices, so as to avoid conflicts and confusion resulting from application of varying local attitudes and procedures to labor disputes. *Garner v. Teamsters Union*, 346 U. S. 485, 490.

Yet, the appellee cites *Allen-Bradley* and the *Briggs-Stratton* decision for continued state authority under the state labor act. As to *Allen-Bradley*, we submit the only way in which this Court's post Taft-Hartley citation of that case can be kept consistent with the rule of *Garner* and *Anheuser-Busch*, is to hold that the states may, at most, regulate violence by remedies not duplicating the federal remedy. This is the Court's holding in *Laburnum*. The union's conduct enjoined under the state labor act in *Briggs-Stratton* was, in the view of this Court, neither protected nor forbidden by the federal act. Hence, that case is but an application of the first proposition for which, we suggested above, *Allen-Bradley* stands. That proposition, we showed, has no application when, as here, the conduct involved is subject to federal regulation. Neither the *Allen-Bradley* nor the *Briggs-Stratton* case support state jurisdiction under a state *labor* statute over conduct which is *also* regulated by the Federal Labor Act.

* * * * *

**The Legislative History**

Appellee quotes Senator Taft to the effect that, in cases of threat of violence, *two* remedies—one state, one federal —might be brought to bear on the same conduct. That, in and of itself, is not inconsistent either with the decisions of this Court or with the position we have taken. The Senatorial debates on this point appear to support the continued applicability of "State and local *police* laws".

There is reference to "good local law enforcement". (*2 Legislative History of the Labor Management Relations Act,* 1947; 1021, 1200, 1578.) This appears to apply to the enforcement of criminal laws of general applicability in the ordinary exercise of "police power" for the maintenance of the public peace, *not* to the enforcement of state labor policy and state labor relations procedures. It would, indeed, have been inconsistent for Congress, in 29 U. S. C. 160 (a), to have established an exclusive federal procedure for the prevention of union and employer unfair labor practices (indicating *the specific method* for ceding jurisdiction in unfair labor practice cases to the states) and at the same time to have intended application of a similar state remedy for the prevention of the same conduct.

Consistent with this analysis is the holding in favor of state jurisdiction by this Court in the *Laburnum* case, where the union's unfair labor practices (which involved violence) were reached by a state remedy that had no parallel in any federal remedy. By the same token, this Court's reference in *Labor Board v. International Rice Milling Company,* 341 U. S. 665 at 672, to "local authorties" would appear to be a reference to local enforcement of the criminal laws and not of state labor policy.

* * * * *

Appellee disagrees with our contention that all of the conduct involved in this case amounts to unfair labor practices under the National Labor Relations Act, as amended. The only reason appellee advances for this is found in Footnote 13 of its Motion to Dismiss. It is to the effect that union unfair labor practices under the federal statute can only be committed by "a labor organization or its agents" and that in this case there has been no finding

that the several *individual* appellants were acting as agents for anyone. This is a strange contention to be advanced by appellee McQuay who originally sued the individual appellants either as "officers or official representatives" of the three appellant labor organizations, or as "persons and parties acting in concert with, or as agents, or representatives" of the other appellants.[2] There is, in any event, no doubt of the status as "labor organizations" of the appellant International Union and its two locals.

Respectfully submitted,

HAROLD A. CRANEFIELD,
*Attorney for Appellants.*

FRANCIS X. HELGESEN,
KURT L. HANSLOWE,
*Of Counsel for Appellants.*

---

[2] See Appendix D of our Jurisdictional Statement.

JUNE 4, 1956.

*Decisions Per Curiam.*

No. 565. INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O., ET AL. *v.* ANDERSON, DISTRICT JUDGE, ET AL. Appeal from the Supreme Court of Minnesota. *Per Curiam:* The judgment is affirmed. *United Automobile, Aircraft and Agricultural Implement Workers of America* v. *Wisconsin Employment Relations Board*, *ante*, p. 266, decided this day. THE CHIEF JUSTICE, MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS dissent. *Harold A. Cranefield* and *Kurt L. Hanslowe* for appellants. *Leland W. Scott* for McQuay, Inc., appellee. Reported below: 245 Minn. 274, 72 N. W. 2d 81.

No. 850. [illegible]